IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

FAO(HMA) No.241 of 2002.

Date of decision: 9.7.2007.

Rajinder Kumar .....Appellant

Vs.

Poonam .... Respondent.

Coram

The Hon'ble Mr. Justice Kuldip Singh, Judge.

Whether approved for reporting? No.

For the Appellant : Mr. N.K. Thakur, Advocate.

For the Respondent : None.

Kuldip Singh, Judge (Oral).

This is an appeal under Section 28 of the Hindu Marriage Act, 1955 filed by petitioner-husband against the judgment, decree dated 16.1.2002 passed by learned District Judge, Una in H.M.A. Petition No. 15 of 1998, dismissing the petition of the husband.

2. The facts in brief are that husband Rajinder Kumar on 18.6.1998 filed a petition under Section 13(1) (i-a) of the Hindu Marriage Act, 1955 (for short 'Act') against wife Poonam for dissolution of marriage on the ground of cruelty. The parties were married on 30.11.1995 according to Hindu rites at Delhi. Thereafter , they lived and cohabited as husband and wife at Una, however, no child was born from the wedlock. The husband consummated the marriage once but thereafter, he could not perform sexual act with the

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Whether the reporters of the local papers may be allowed to see the Judgment? Yes

wife because she complained pain in her private parts. The petitioner tried to have sexual intercourse with her but she refused. The petitioner consulted a doctor who advised for the use of ointment, but wife refused to use the ointment and have sexual intercourse with the husband. The wife was checked up at Kanwar Nursing Home on 15.7.1997, she was found medically fit for sexual intercourse. She was prescribed certain medicines, but she did not agree to have sexual intercourse with the husband.

3. The parties filed an application on 10.11.1997 for divorce by mutual consent, but later on wife withdrew the consent. She initiated proceedings against the husband and members of his family on a false complaint under Sections 498-A and 406 IPC. On these grounds the husband sought decree of divorce.

4. The petition was resisted by the wife and she has denied the allegations. She has pleaded that the parties cohabited as husband and wife and had sexual intercourse in the normal way. She never refused to have sexual intercourse with the husband. The respondent is a fully grown lady, fit for sexual intercourse and she used to have sexual relations with the petitioner. The application for divorce by mutual consent was the result of fraud, undue pressure and duress upon the respondent. The petitioner used to ask the respondent to have unnatural intercourse with him to which she refused and her refusal to have un-natural acts enraged the petitioner and he refused to keep the respondent as his wife. The respondent never treated the petitioner with cruelty and she wants to live and cohabit with the petitioner as his wife.

5. The learned District Judge dismissed the petition on 16.1.2002 against which the husband has filed the appeal.

6. I have heard the learned counsel for the appellant and have also gone through the record.

7. The husband has appeared as PW-1 and has stated that his marriage was solemnized with the respondent on 30.11.1995 at Delhi. The wife refused to have sexual intercourse with him on the first night on the plea of pain in her private parts. He has stated that the parties got several opportunities to have sexual intercourse but wife did not allow him to have sexual intercourse with him. The wife would say that she does not like him. On 15.7.1997 she was taken to Kanwar Nursing Home where doctor told her that she was fit for performing sexual intercourse. A mutual consent divorce petition was given by the parties but wife later on withdrew her consent on 2.6.1998 and since then she is living at her parents house. She filed complaint under Sections 406, 498-A IPC against him and his family members. The articles of the wife were returned to her. In his statement husband has no where stated that the alleged act and conduct attributed to wife has caused mental pain, agony, tension or cruelty to him. The wife in her reply as well as in her statement has refuted the allegations of the husband. She as RW-1 has stated that after marriage for six months they had physical relations when she lived with her husband in her in laws house. They had good relations as husband and wife for about one month after the marriage but thereafter the husband started insisting her to have unnatural intercourse with her, which she refused. On this husband started ill-

treating her. The family of the husband also ill-treated her. They demanded dowry. The mutual consent divorce petition was got signed by the petitioner and his family members from her after giving threats to her but in Court she refused to give her consent. She informed the Delhi Women Cell regarding the treatment given by husband and his family members to her and thereafter a case under Sections 406, 498-A IPC was registered against them. She offered to live with the husband, if not ill-treated.

8. The allegations made by the husband in the petition have not been proved. The wife has refuted the allegations of the husband and her refusal to have sexual intercourse with him on oath. It has come in the evidence of the husband that even the doctor at Kanwar Nursing Home found the wife fit for sexual intercourse. It is not the case of the husband that the doctor at that time told that there was any defect in the private parts of the wife which causes pain. Therefore, the plea of the husband that wife refused to have sexual intercourse with him on the plea that such act causes pain in her private parts is not believable. The husband has not stated that alleged refusal of wife to have sexual intercourse with him and filling of her complaint under Sections 406, 498-A IPC has caused mental cruelty to him. The allegations made in the petition have not been proved, rather the wife in her statement on oath has denied all these allegations. The learned District Judge has appreciated the material on record in right perspective and has rightly come to the conclusion that husband has failed to make out any case for granting decree of divorce. No case for interference is made out.

9. No other point was urged.

10. In view of the above, the appeal is dismissed. No costs.

(Kuldip Singh)
Judge.

July 9, 2007
(sks)